IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17257 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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BALUBHAI RANCHHODBHAI MAKWANA - Petitioner(s)

Versus

GOVT. OF GUAJRAT THR' SECRETARY & 3 - Respondent(s)

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Appearance :

MR RK MISHRA for the Petitioner

MS MANISHA SHAH, A.G.P. for the Respondents

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/03/2006

ORAL JUDGMENT

1. Rule. Ms. Manisha Shah, learned Assistant Government Pleader waives service of Rule on behalf of the respondents. At the joint request of the learned advocates for the parties, the petition is taken up for final disposal today.

2. The grievance of the petitioner is that the respondents have not released his post retiral benefits such as gratuity, leave encashment and pension on the ground that there is recovery of amount of Rs. 1,86,245 (Rupees One Lakh Eighty Six Thousand Two Hundred and Forty Five only) outstanding against the petitioner. It is the case of the petitioner that the respondents are insisting, that the petitioner should give undertaking permitting the respondents to adjust / recover the said amount from the pensionary benefits payable to the petitioner. The petitioner retired from the government service with effect from 30.11.2001, as Peon having joined the government service in the year 1976. It is not in dispute that the petitioner is entitled to post retiral benefits such as gratuity, leave encashment and pension. It is not in dispute that on the ground of recovery of Rs. 1,86,245/-(Rupees One Lakh Eighty Six Thousand Two Hundred and Forty Five only), such benefits are not paid to the petitioner in full. From the affidavits-in-reply filed by the respondents, it appears that the recovery sought is towards unpaid house rent. It is the case of the respondents that after giving sufficient opportunities, the respondents found that the petitioner had unauthorizedly occupied the official

quarter and had not vacated the same despite his transfer. It is on this basis, the demand of rent was raised against the petitioner. It is the case of the respondents that orders passed by the authorities have not been challenged by the petitioner and the demand has thus, achieved finality. Learned Advocate for the petitioner points out that the payment of recovery was challenged by the petitioner before the Civil Court. However, the Civil suit came to be dismissed by an order dated 17.12.2002. He agrees that the petitioner, thereafter, has not taken any further steps to pursue his challenge. In short it is the case of the respondents that the post retiral benefits of the petitioner were not released since, he did not give undertaking as directed by the respondents, nor could he produce No Due Certificate.

3. Be that as it may, the fact remains that the petitioner is entitled to receive his post retiral benefits even after the reduction / withholding of the payment by the respondents of Rs. 1,86,245/-(Rupees One Lakh Eighty Six Thousand Two Hundred and Forty Five only). It is not in dispute that the gratuity, leave encashment and final pension have not been paid to the

petitioner. In the facts of the present case, therefore, I find it appropriate that the respondents shall release the same even after withholding the amount of Rs. 1,86,245/- (Rupees One Lakh Eighty Six Thousand Two Hundred and Forty Five only) from the benefits payable to the petitioner.

4. In the result, it is directed that the respondents shall release all post retiral benefits of the petitioner including his unpaid gratuity, leave encashment, pension as may be finalised, without any further delay and all other benefits due and payble to the petitioner except sum of Rs. 1,86,245/-(Rupees One Lakh Eighty Six Thousand Two Hundred and Forty Five only), which has been disputed by the respondents. The pension of the petitioner be finalised without any further delay and the amounts required to be paid as per this order be released latest by 30.06.2006.

5. With these directions, the petition is disposed of. Rule made absolute to the aforesaid extent. No order as to costs.

[Akil Kureshi, J.]

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